IN THE HIGH COURT OF BOMBAY AT GOA

SUO MOTU CRIMINAL CONTEMPT PETITION NO. 2 OF 2004

V/s.

1. Dr. Rajiv Phondu Gude,
"Shivam" Flat No.7,
2nd Floor, Natwar Nagar, No.4,
Jogeshwari (East),
Mumbai 400 060.

2.State of Goa, through the
Public Prosecutor, Panaji, Goa. ..... Respondents.

Mr. S.G. Dessai, Sr. Advocate with Mr. Shivan Dessai, Advocate for respondent No.1.

CORAM : B.H. MARLAPALLE &
N.A. BRITTO, JJ.

DATE : DECEMBER 07, 2004.

ORAL JUDGMENT : (Per MARALPALLE, J.)

The respondent-alleged contemner Dr. Rajiv Phondu Gude had filed Regular Civil Suit No.81/1999 before the Court of Civil Judge, Jr. Division, at Ponda for eviction of a tenant from his property known as "Ravalnatha Deulavodil Tucda". The trial Court was pleased to dismiss the suit by its Judgment and Decree dated 17th May, 2002 and, therefore, the plaintiff filed Regular Civil Appeal

No. 85/2002 in the District Court, at Panaji. The said appeal was decided by the learned Addl. District Judge, Panaji and it was allowed on 3.5.2003. The suit was decreed with a direction to the defendant to vacate the suit structure bearing house No.1088, situated in the property known as “Ravalnatha Deulavodil Tucda” surveyed under No.24/7 of Village Shiroda and hand over the possession of the same to the plaintiff. This Decree passed by the lower appellate Court came to be challenged in Second Appeal No. 106/2003 before this Court and in response to the notice issued, the original plaintiff appeared as party in person.

2. On 8.1.2004, while admitting the second appeal, this Court considered the prayer for stay to the Decree in Civil Application No.319/2003 and stayed the impugned Decree on the condition that the judgment-debtor would deposit in the trial Court the mesne profits as directed by the lower appellate Court for the period of three years prior to the institution of the suit, as well as for the period stipulated during the pendency of the appeal. The plaintiff was also granted a liberty to withdraw the mesne profits without prejudice to his rights and contentions, on furnishing security to the satisfaction of the trial Court. The Civil Application was finally disposed of

accordingly.

3. However, when the plaintiff received the writ from this Court, the order passed in Civil Application No.319/2003 was not served on him and he received only the order passed in Second Appeal No.106/2003. This appears to have disturbed the plaintiff and without being aware of the Court procedures, more particularly separate orders in the second appeal and the civil application, he expressed his anger/frustration by addressing a letter to His Excellency, the Governor of Goa, on 26th January, 2004, with a copy to the learned Judge, who had passed the orders in the second appeal, as well as the civil application and an additional copy was also forwarded to the Honourable Chief Minister of Goa. On receipt of the said letter, Her Ladyship passed an order on 5.2.2004, directing the Registry to issue notice to show cause why action in contempt should not be taken against the plaintiff.

4. Dr. Gude appeared in response to the show cause notice and filed an affidavit on or about 16.2.2004 and tendered his unconditional apology, while sincerely regretting for the letter he has addressed to the Governor. He stated that he has highest respect for this Court and holds the entire Indian Judiciary in the highest esteem.

He did not have any intention whatsoever to disrespect this Honourable Court and he wrote the said communication under a mistaken belief that the order of deposit of mesne profits passed in the civil application, was omitted by the Stenographer and only the order passed in Second Appeal No.106/2003 was communicated to him, deliberately. This apology was not found to be satisfactory by the Division Bench in its Order dated 17.2.2004 and the contempt petition was ordered to be admitted. The Division Bench observed that the letter disclosed prima facie commission of the offence under the Contempt of Courts Act, though it was not elaborated further regarding the ingredients of criminal contempt within the meaning of Section 2(c) of the Contempt of Courts Act, 1971. Section 15(3) of the Act states that every motion made under that section shall specify the contempt of which the person charged is alleged to be guilty. This statutory requirement has not been complied in this case.

5. Dr. Gude filed an additional affidavit on or about 9.7.2004 and while confirming the first affidavit dated 16.2.2004, he reiterated that he holds the entire judiciary in the highest respect and esteem and he had no intention whatsoever at any time to disrespect this Court. He was totally depressed and had lost his mental balance when he

addressed the letter dated 26.1.2004, on account of grave and sudden provocation that he received from reading the order in the second appeal. He felt that the Court's staff had manipulated and the order passed in the civil application did not accompany the order passed in the second appeal. In paras 5 and 6 of this additional affidavit, Dr. Gude, a Scientist presently working under the Cancer Research Centre which is part of the Tata Memorial Centre at Mumbai, stated thus :

> "5. Being depressed, after losing mental balance and on being provoked as aforesaid, and after losing my head, I in a rage, wrote the aforesaid grievance letter without meaning any offence or disrespect to this Hon'ble Court or without knowing what I was writing or without understanding the consequences.
>
> 6. I reiterate that I have highest respect for this Hon'ble Court. I have no intention to cast any slur on this Hon'ble Court. I again unconditionally apologize."

6. On July 8, 2004, Dr. Gude addressed a letter to His Excellency, the Governor of Goa, tendering an unconditional apology for writing an unwarranted letter dated 26th January, 2004. He stated that he wrongly understood the order dated 8.1.2004 passed in Second Appeal No.106/2003 and he mistook it as the order passed in Civil Application No.319/2003, filed in the said second appeal. He reiterated that he has highest respect for the judiciary and

he holds it in highest esteem. He, therefore, begged for pardon from His Excellency. A similar letter was addressed to the Honourable Chief Minister of Goa on 8th July, 2004.

7. We have heard Mr. Dessai, the learned Senior Counsel in defence. He has taken us through the letter dated 26th January, 2004 and it was contended that the said letter was written by a person who was totally ignorant of the judicial hierarchy and also the separation of the judiciary from the executive. The letter expected from the Governor to cause investigation as to who was responsible for the deletion of the order passed in the civil application, in a malafide way and whether it was to protect the tenant in the High Court premises. It appears from this statement that the plaintiff was under the impression that the Governor as the head of the State is also head of the Judiciary. The plaintiff expressed his strong feeling that the order passed in the civil application was suppressed by the Court's staff, but not inadvertently or in normal course. In the subsequent part of this letter, the plaintiff posed certain questions and questions No.1 to 5 need to be reproduced :

> 1) If the decree was passed on 3rd May, 2003, then how did Hon'ble High Court ignore this delay for presentation i.e. after 7 months of interval ?

> 2) Where were the papers during the period from September 2003 to December, 2003 in view of altered dates as observed in my papers which are received by me from Hon'ble High Court of Goa ?
>
> 3) Who did help Appellant to alter the dates in the premises of High Court ?
>
> 4) Why did High Court Judge ignore this alterations ?
>
> 5) What was the situation make Hon'ble Lordship to pass ex parte status quo ?

The letter concluded with the allegations that the appellant had indulged in manipulation at every stage before this Court and had sought a reply in regard to the fabricated appeal filed in the High Court after conducting an extensive investigation.

8. We have no doubt in our mind that the language and substance of the above reproduced questions prima facie amounted to a contemptuous act, interfering with the course of justice and tended to scandalize the Court's working. We are required to consider whether the respondent should be punished or he should be let off on the basis of the apology he has tendered even in the additional affidavit after the contempt petition was admitted by this Court. At this stage, we may reproduce Section 13 of the Act, as follows :

> "13. **Contempts not punishable in certain cases. - Notwithstanding anything contained**

> **in any law for the time being in force, no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice."**

9. In the case of ***Brahma Prakash Sharma and ors. vs. The State of Uttar Pradesh*** (AIR 1954 SC 10), a Constitution Bench dealing with a case of Contempt of Courts Act, more particularly criminal contempt, stated thus :

> "There are two primary considerations which should weigh with the court when it is called upon to exercise the summary powers in cases of contempt committed by 'scandalising' the court itself. In the first place, the reflection on the conduct or character of a judge in reference to the discharge of his judicial duties, would not be contempt if such reflection is made in the exercise of the right of fair and reasonable criticism which every citizen possesses in respect of public acts done in the seat of justice. It is not stifling criticism that confidence in courts can be created.
>
> In the second place, when attacks or comments are made on a judge or judges, disparaging in character and derogatory to their dignity, care should be taken to distinguish between what is a libel on the judge and what amounts really to contempt of court. The fact that a statement is defamatory so far as the Judge is concerned does not necessarily make it a contempt. ... If however, the publication of the disparaging statement is calculated to interfere with the due course of justice or proper administration of law by such court, it can be punished summarily as contempt. One is a wrong done to the

> judge personally while the other is a wrong done to the public. It will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice, or if it is likely to cause embarrassment in the mind of the judge himself in the discharge of his judicial duties."

In the case of ***S.K. Sundaram*** (AIR 2001 SC 2374), the Supreme Court observed that the criminal contempt is vivisected into two categories. One is publication of any matter which scandalises or tends to scandalise the authority of any Court etc. and the second is the doing of any act whatsoever which scandalises or tends to scandalise the authority of any Court. In the case of ***Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat*** (AIR 1991 SC 2176), a Three Judge Bench stated :

> "The definition of criminal contempt is wide enough to include any act by a person which would tend to interfere with the administration of justice or which would lower the authority of Court. The public have a vital stake in effective and orderly administration of justice. The Court has the duty of protecting the interest of the community in the due administration of justice and, so, it is entrusted with the power to commit for contempt of Court, not to protect the dignity of the Court against insult or injury, but, to protect and vindicate the right of the public so that the administration of justice is not

> perverted, prejudiced, or obstructed or interfered with."

10. The substance of the questions posed by the plaintiff in the letter dated 26th January, 2004, it is required to be noted more emphatically, does not cast any aspersions or motives against an individual Judge, though question Nos. 4 and 5 appear to question the authority of the Judge. It is obvious that under sheer ignorance of the Court procedure the questions were posed by the person who was ingrained solely because the order regarding deposit of the mesne profits which was passed in his presence by this Court was not received by him. The mindset of the writer is clearly of a scientist, totally ignorant of the Court procedures and that the Courts work within the frame-work of law. He had appeared as a party in person and had he engaged a Lawyer, he could have got the benefit of understanding the Court procedure and the situation of posing the questions or writing a letter to His Excellency would have perhaps not arisen. The plaintiff landed himself in a most unfortunate situation. But, after the contempt notice was issued against him, he realised his mistake and tendered the unconditional apology while repeating that he holds this Court as well as the entire Judiciary as such in the highest esteem. He was quick enough to address another letter to

His Excellency the Governor withdrawing the first one and also tendered his unconditional apology. The behavior of the plaintiff, in our considered opinion, would not fall in the category of `reckless and persistent'. At the same time, the letter is not a deliberate attempt to malign the reputation of this Court and it is out of sheer frustration and ignorance. The apology tendered by the plaintiff appears to be sincere and genuine. It displays his repentance and has been submitted at the first instance possible.

11. In the case of **Re: S. Mulgaokar** (AIR 1978 SC 727), it was reiterated that the judiciary cannot be immune from criticism. But, when that criticism is based on obvious distortion or gross mis-statement and made in a manner which seems designed to lower respect for the judiciary and destroy pubic confidence in it, it cannot be ignored. A decision on the question whether the discretion to take action for contempt of Court should be exercised in one way or the other, must depend on the totality of facts and circumstances of the case. The Court must harmonise the constitutional values of free criticism, and the need for a fearless curial process and its presiding functionary, the Judge. To criticise a Judge fairly, albeit fiercely, is no crime, but a necessary

right.

12. In the case of **Radha Mohan Lal, v. Rajasthan High Court (Jaipur Bench),** AIR 2003 SC 1467, the Supreme Court, while upholding the impugned judgment holding the appellant guilty of contempt of Court, the order of punishment was set aside by accepting the apology.

In the case of **M.Y. Shareef v. Hon'ble Judges of High Court of Nagpur,** AIR 1955 SC 19, the Supreme Court held that when the apology is found of real contrite as also of his consciousness of wrong done by him, the same is required to be accepted and the contemner be discharged even though prima facie case of contempt was noted.

In the case of **Nagarpalika Kamgar Union, Amalner and anr. v. State of Maharashtra and ors., 2001 Cri. L.J. 1895,** a Division Bench of this Court to which one of us, (Maralapalle, J.) was a party, stated :

> " The power to punish for contempt of Court's proceedings must be exercised with due care and caution and in cases of larger interest for due administration of justice. It is to be used for the purpose of ensuring the rule of law. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the Courts of law since the image

> of such a majesty in the minds of the people cannot be led to be distorted."

11. We, therefore, by taking into consideration the peculiar circumstances of this case and the subsequent behaviour of the plaintiff of repentance, withdrawal of the letters and submission of unconditional apology, which is found to be natural and sincere, we deem it appropriate to discharge him from the contempt proceedings and we order accordingly.

B.H. MARLAPALLE, J.

N.A. BRITTO, J.

ssm.